

J. GARY GWILLIAM (State Bar No. 33430)
RANDALL E. STRAUSS (State Bar No. 168363)
GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER
1999 Harrison Street, Suite 1600
Oakland, California 94612-3528
Telephone: (510) 832-5411
Facsimile: (510) 832-1918

Attorneys for Plaintiffs
Connie G. Bender and Constance Davis

PATRICIA K. GILLETTE (STATE BAR NO. 74461)
pgillette@orrick.com
ROBERT S. SHWARTS (State Bar No. 196803)
rshwarts@orrick.com
KRISTEN M. JACOBY (State Bar No. 243857)
kjacoby@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
San Francisco, California 94105
Telephone: (415) 773-5700
Facsimile: (415) 773-5759

Attorneys for Defendant
Bank of America, National Association
(erroneously sued as "Bank of America")

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD ADAME, CONNIE G. BENDER,
and CONSTANCE DAVIS

Plaintiff,

v.

BANK OF AMERICA, NATIONAL
ASSOCIATION (erroneously sued as "Bank of
America")

Defendant.

Case No. CV 09-0129 SI

**STIPULATED REQUEST TO CLARIFY
PRETRIAL SCHEDULE PURSUANT TO
CIVIL L.R. 6-2 AND PROPOSED ORDER;
DECLARATION OF LENA P. RYAN IN
SUPPORT OF SAME**

Judge: Hon. Susan Illston
Trial Date: January 18, 2011

STIPULATION

1. Pursuant to Civil Local Rule 6-2, the parties hereto through their respective attorneys of record hereby stipulate and agree to the following:

a. **Clarification of Pretrial Deadlines:** The parties request that the Court clarify the deadlines for pretrial disclosures and filings in connection with this action, to ensure that the parties' understanding of the applicable pretrial deadlines conforms with that of the Court. This is not a request for an extension of any deadline. The parties have reviewed the Court's Pretrial Preparation Orders, the Local Civil Rules, the Court's Standing Orders, and the applicable Federal Rules of Civil Procedure. The parties agree that the dates on which the pretrial disclosures and filings mandated by the same are susceptible to differing interpretations. Therefore, the parties agree to the following deadlines, and request that the Court clarify that such deadlines conform to the Court's expectations for this action:

- **December 17, 2010:** Deadline to file and serve all Pretrial Disclosures mandated by Federal Rule of Civil Procedure 26(a)(3).
- **December 28, 2010:**
 - Deadline for parties to file a Joint Pretrial Conference Statement containing the information outlined in the Court's Pretrial Instructions, dated September 2010.
 - Deadline for the parties to file a joint set of Jury Instructions in accordance with the Court's Pretrial Instructions, dated September 2010.
 - Deadline for the parties to file and serve Proposed Voir Dire Questions and Verdict Forms.
 - Deadline for the parties to stipulate or object to the admissibility of exhibits.
 - Deadline to file and serve Motions *in Limine*.
- **January 4, 2011:** Deadline to file and serve any Opposition to Motions *in Limine*.
- **January 14, 2011:** Deadline for parties to provide copies of exhibits to the Court in accordance with the Court's Pretrial Instructions, dated September 2010.

2. **Stipulation Regarding Timing of Depositions of Plaintiffs' Experts:** In addition, the parties stipulate that Defendant will take the deposition of Plaintiffs' experts Dr. Paul Berg and Dr. Phillip Allman in January 2011, on dates to be agreed upon by the parties. Plaintiffs agree to extend the deadline for expert discovery accordingly.

3. Both parties agree to the Stipulation as indicated by their signatures below. The parties respectfully request that the Court approve the Stipulation, pursuant to Civil L.R. 6-2 and enter an Order thereupon. A form of proposed Order is filed herewith.

The parties make this stipulated request based on the facts set forth in the attached declaration of Lena P. Ryan.

Dated: December 7, 2010

Respectfully submitted,

J. GARY GWILLIAM
RANDALL E. STRAUSS
GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER

By: /s/ Randall E. Strauss

Randall E. Strauss
Attorneys for Plaintiffs
Connie G. Bender and Constance Davis

Orrick attests that concurrence in the filing of the document has been obtained from the other signatory, which shall serve in lieu of their signature on the document.

Dated: December 7, 2010

Respectfully submitted,

PATRICIA K. GILLETTE
ROBERT S. SHWARTS
KRISTEN M. JACOBY
ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Kristen M. Jacoby

Kristen M. Jacoby
Attorneys for Defendant
Bank of America, National Association

ORDER

The Court having considered the above Stipulation, and good cause appearing therefore,
HEREBY CLARIFIES that the following pretrial deadlines shall apply to parties to this action:

- **December 17, 2010:** Deadline to file and serve all Pretrial Disclosures mandated by Federal Rule of Civil Procedure 26(a)(3).
- **December 28, 2010:**
 - Deadline for parties to file a Joint Pretrial Conference Statement containing the information outlined in the Court's Pretrial Instructions, dated September 2010.
 - Deadline for the parties to file a joint set of Jury Instructions in accordance with the Court's Pretrial Instructions, dated September 2010.
 - Deadline for the parties to file and serve Proposed Voir Dire Questions and Verdict Forms.
 - Deadline for the parties to stipulate or object to the admissibility of exhibits.
 - Deadline to file and serve Motions *in Limine*.
- **January 4, 2010:** Deadline to file and serve any Opposition to Motions *in Limine*.
- **January 14, 2010:** Deadline for parties to provide copies of exhibits to Court in accordance with the Court's Pretrial Instructions, dated September 2010.

The Court further approves the parties' Stipulation to conduct expert depositions past the cutoff for expert discovery.

IT IS SO ORDERED.

Hon. Susan Illston


UNITED STATES DISTRICT JUDGE

DECLARATION OF LENA P. RYAN

1
2 1. I am an attorney at the law firm of Orrick, Herrington & Sutcliffe LLP, counsel of
3 record for Defendant Bank of America, National Association (“Defendant”). I make this declaration out
4 of my own personal knowledge and, if called as a witness, I could and would testify competently to the
5 matters set forth herein.

6 2. The purpose of this Stipulated Request to Clarify Pretrial Schedule is to clarify
7 the deadlines for pretrial disclosures and filings due in this action. This is not request to extend or
8 change the time for any deadline.

9 3. The parties’ confusion regarding the deadlines for pretrial disclosures and filings
10 stems from the following: The Court’s Second Pretrial Preparation Order, dated November 11, 2009,
11 indicates, “Pretrial filings due: December 14, 2010,” but it does not specify the specific “pretrial filings”
12 to which this applies. (*See* Doc.# 37.) Moreover, the Court’s Second Pretrial Preparation Order directs
13 the parties to conform to the Court’s Pretrial Instructions, dated May 2006. (*See id.*) These May 2006
14 Pretrial Instructions slightly differ from the Court’s most recent Pretrial Instructions, dated September
15 2010, with regard to the manner in which deadlines are to be calculated. The May 2006 Pretrial
16 Instructions calculate deadlines using “court days,” whereas the September 2010 Pretrial Instructions
17 appear to calculate deadlines according to “calendar days.” Thus, depending on which Pretrial
18 Instructions are applied when calculating pretrial deadlines, those deadlines may slightly differ.

19 4. On December 6, 2010, I spoke with Jayme Burns, from Plaintiffs’ counsel’s
20 office, about the above confusion. Ms. Burns and I agreed that it was in all parties’ best interests to
21 request that the Court clarify the dates on which the Court expects the pretrial disclosures and filings to
22 occur in this action.

23 Executed this 6th day of December 2010 in San Francisco, California. I declare under
24 penalty of perjury of the laws of the United States that the foregoing is true and correct.

/s/ Lena P. Ryan

Lena P. Ryan